

Department of Veterans Affairs

§ 21.3021

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

AUTHORITY: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

GENERAL

§ 21.3001 Delegation of authority.

Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. chapter 35 and the applicable regulations, precedents and instructions, as to the program authorized by this subpart.

(Authority: 38 U.S.C. 512(a))

[61 FR 26108, May 24, 1996]

§ 21.3002 Administration of Survivors' and Dependents' Educational Assistance Program.

Subpart D of this part applies to the Survivors' and Dependents' Educational Assistance Program, unless the provisions of a section in that subpart are explicitly limited to one or more of the other educational assistance programs VA administers.

(Authority: 38 U.S.C. 501, 3501–3566)

[61 FR 26108, May 24, 1996]

§ 21.3020 Educational assistance.

The program of educational assistance under 38 U.S.C. Chapter 35 captioned Survivors' and Dependents' Educational Assistance, may be referred to as Dependents' Educational Assistance.

(Authority: Sec. 309, 90 Stat. 2383)

(a) *General.* A program of education or special restorative training may be authorized for an eligible person who meets the definition contained in § 21.3021.

(b) *45 months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, unless it is determined that a longer period is required for spe-

cial restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c).

(Authority: 38 U.S.C. 3511(a), 3533, 3541(b))

(c) *Courses in foreign countries.* A course to be pursued at a school not located in a State or in the Philippines may not be approved except under the circumstances outlined in § 21.4260.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 841, Jan. 18, 1969; 38 FR 14931, June 7, 1973; 43 FR 35289, Aug. 9, 1978]

§ 21.3021 Definitions.

For the purposes of subpart C and the payment of basic educational assistance under 38 U.S.C. chapter 35, the following definitions apply.

(a) *Eligible person* means:

(1) A child of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability.

(iii) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(iv) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(2) The surviving spouse of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability, arising out of active military, naval or air service after the beginning of the Spanish-American War. (See §§ 3.6(a) and 3.807 of this chapter.)

(3) The spouse of a:

(i) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(ii) Person who is on active duty as a member of the Armed Forces and who

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now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(b) *Child* means a son or daughter of a veteran as defined in § 3.807(d) of this chapter. The term includes a child of a Philippine Commonwealth Army veteran and a Philippine Scout (designated as a *New* Philippine Scout under 38 U.S.C. 3566(b)), as defined in § 3.40(b), (c), or (d) of this chapter, but educational assistance allowance may not be authorized based on such service for any period before September 30, 1966.

(c) *Wife* and *widow*, *spouse* and *surviving spouse*. The terms *wife* and *widow* mean an individual as defined in § 3.807(d) of this chapter and the terms *spouse* and *surviving spouse* shall have the same respective meaning when used in the regulations in part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968.

(Authority: 38 U.S.C. 3500, 3501, and 3511)

(d) *Parent or guardian* means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 3501(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 3501(b)) The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be

designated as the person by whom required actions should be taken.

(Authority: 38 U.S.C. 3501(c))

(e) *Armed Forces*, as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 3501 (a)(3) and (d) and 3512(a)) Effective December 31, 1970, the term includes the National Oceanic and Atmospheric Administration, the Environmental Science Services Administration and the Coast and Geodetic Survey, as to full-time duty of officers commissioned therein.

(Authority: 38 U.S.C. 101(21)(C))

(f) *Duty with the Armed Forces*, as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 3501(a)(3) and (d), 3512(a)) See §§ 21.3041 and 21.3042.

(g) *State* means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20)) (Although the Republic of the Philippines is not included in the definition of a State, eligible persons may pursue courses of training in that country.)

(h) *Program of education*. The term *program of education* means any curriculum or any combination of unit courses or subjects pursued at an educational institution that is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. The term program of education also includes—

(1) A preparatory course for a test that is required or used for admission to an institution of higher education;

(2) A preparatory course for a test that is required or used for admission to a graduate school; and

(3) A licensing or certification test, the successful completion of which

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demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided such tests and the licensing or credentialing organizations or entities that offer such tests are approved by VA.

(Authority: 38 U.S.C. 3002(3), 3501 (a)(5))

(i) *Educational objective.* An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3501(a)(5))

(j) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(k) *School, educational institution, institution.* The terms *school*, *educational institution* and *institution* mean:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private secondary school;

(4) A training establishment as defined in § 21.4200(c); or

(5) An institution that provides specialized vocational training, generally recognized as on the secondary school level or above, for people with mental or physical disabilities.

(Authority: 38 U.S.C. 3501(a)(6), 3535)

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of

chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

(m) *Institution of higher education.* The term *institution of higher education* has the same meaning as provided in § 21.7020(b)(45).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(n) *Graduate school.* The term *graduate school* has the same meaning as provided in § 21.7020(b)(46).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(o) *Eligibility date.* The term *eligibility date* means the date on which an individual becomes an eligible person (as defined in paragraph (a) of this section).

(Authority: 38 U.S.C. 5113)

(p) *P&T* means permanent and total "disability," permanently and totally "disabled," or permanent and total "rating," when any of these terms are used in reference to a veteran with a service-connected disability rating determined by VA to be total for the purposes of VA disability compensation where the impairment is reasonably certain to continue throughout the life of the disabled veteran.

(Authority: 38 U.S.C. 3501(a)(8))

(q) *Initial rating decision.* The term *initial rating decision* means, with respect to an eligible spouse or child, a

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decision made by VA that establishes for the person from whom such eligibility is derived—

(1) Service connection for the cause of the person's death;

(2) A service connected P&T disability; or

(3) For a member of the Armed Forces, a P&T disability incurred or aggravated in the line of duty in the active military, naval, or air service if the member is hospitalized or receiving outpatient medical care, services, or treatment, and is likely to be discharged or released from such service for such disability.

(Authority: 38 U.S.C. 5113)

(r) *Effective date of the P&T rating.* The term *effective date of the P&T rating* means the date from which VA considers that the veteran's P&T disability commenced for purposes of VA benefits, as determined by the initial rating decision.

(Authority: 38 U.S.C. 3512(d))

(s) *First finds.* The term *first finds* means the effective date of the P&T rating or the date VA first notifies the veteran of that rating, whichever is more advantageous to the child.

(Authority: 38 U.S.C. 3512(d))

(t) *Counseling psychologist* means the same as provided in § 21.35(k)(1).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(u) *Vocational rehabilitation counselor* means the same as provided in § 21.35(k)(7).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(v) *Additional definitions.* The definitions of all terms that are defined in §§ 21.1029 and 21.4200 but that are not defined in this section apply to subpart C of this part.

(Authority: 38 U.S.C. 501, 3501)

CROSS REFERENCES: *Duty periods.* See § 3.6 of this chapter.

Persons included. See § 3.7 of this chapter.

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Philippine and insular forces. See § 3.40 of this chapter.

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978; 61 FR 26108, May 24, 1996; 61 FR 29295, June 10, 1996; 62 FR 51784, Oct. 3, 1997; 64 FR 23771, May 4, 1999; 73 FR 2423, Jan. 15, 2008; 73 FR 30488, May 28, 2008]

§ 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

- (a) 38 U.S.C. chapter 30,
- (b) 38 U.S.C. chapter 31,
- (c) 38 U.S.C. chapter 32,
- (d) 38 U.S.C. chapter 34,
- (e) 10 U.S.C. chapter 1606,
- (f) 10 U.S.C. chapter 107,
- (g) Section 903 of the Department of Defense Authorization Act, 1981,
- (h) The Hostage Relief Act of 1980, and
- (i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29798, July 7, 1992; 61 FR 20728, May 8, 1996]

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or